

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PAWS UP RANCH, LLC, et al.,

Plaintiff(s),

vs.

CHRISTOPHER GREEN, et al.,

Defendant(s).

Case No. 2:12-cv-01547-GMN-NJK

ORDER GRANTING MOTION TO
EXTEND TIME TO SERVE AND TO
SERVE BY PUBLICATION

(Docket No. 212)

Pending before the Court is Plaintiffs' motion for an extension of time to serve two Defendants and for leave to serve them by publication. Docket No. 212. The Court finds the motion properly resolved without oral argument. *See* Local Rule 78-2. For the reasons discussed below, the motion is hereby GRANTED.

The pending motion seeks an extension of time to allow service by publication on Defendants Equity Financing, Ltd. and MKS, LLC. Where good cause is shown, the time for serving the complaint is extended for an appropriate period. *See* F.R.C.P. 4(m).¹ Service by publication implicates a defendant's fundamental due process rights. *See, e.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *Price v. Dunn*, 787 P.2d 785, 787 (Nev. 1990). As a result, service by publication is generally disfavored. *See, e.g., Trustees of the Nev. Resort Assoc.-Int'l Alliance of*

¹ The relevant standards governing this request are more fully outlined by Chief United States District Judge Gloria M. Navarro in Docket No. 76.

1 *Theatrical Stage Employees & Moving Picture Machine Operators v. Alumifax, Inc.*, 2013 U.S. Dist.
2 Lexis. 106456, *2 (D. Nev. July 29, 2013).

3 Federal Rule of Civil Procedure 4(e)(1) provides for service “pursuant to the law of the state in
4 which the district court is located, or in which service is effected.” Under Nevada Rule of Civil
5 Procedure (“NRCP”) 4, parties are required to personally serve summons and the complaint upon
6 defendants. When personal service proves impossible, however, NRCP 4(e)(1)(i) provides that a party
7 may file a motion for service by publication when the opposing party “resides out of the state, or has
8 departed from the state, or cannot, after due diligence be found within the state, or by concealment seeks
9 to avoid the service of summons.” When service of the summons is made by publication, the summons
10 shall, in addition to any special statutory requirements, also contain a brief statement of the object of the
11 action. N.R.C.P. 4(b).

12 A party moving for service by publication must seek leave of court by filing an affidavit
13 demonstrating he diligently attempted to personally serve the defendant. There are several factors courts
14 consider to evaluate a party’s due diligence, including the number of attempts made to serve the
15 defendants at their residence and other methods of locating defendants, such as consulting public
16 directories and family members. *See Price*, 787 P.2d at 786-87; *Abreu v. Gilmer*, 985 P.2d 746, 747
17 (Nev. 1999); *McNair v. Rivera*, 874 P.2d 1240, 1241 (Nev. 1994).

18 Here, the Court finds that Plaintiffs have diligently attempted to serve Equity Financing, Ltd. on
19 multiple occasions at numerous addresses. *See Mot.* at 4-5, Exhs. 2-5. For example, Plaintiffs have
20 located persons with the same names as the registered agent and partner of Equity Financing, Ltd., only
21 to conclude that the persons located were not the correct individuals. *See Mot.* at 4. The Court will
22 therefore permit Plaintiffs to serve Equity Financing, Ltd. by publication. Because service by
23 publication takes several weeks, the Court will also extend the service deadline.

24 The Court also finds that Plaintiffs have diligently attempted to serve MKS, LLC on multiple
25 occasions at numerous addresses. *See Mot.* at 5, Exhs. 7-8. For example, Plaintiffs have located persons
26 with the same names as the registered agent and partner of MKS, LLC, only to conclude that the persons
27 located were not the correct individuals. *See Mot.* at 5. The Court will therefore permit Plaintiffs to
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1 serve MKS, LLC by publication. Because service by publication takes several weeks, the Court will also
2 extend the service deadline.

3 Accordingly, the Court GRANTS the motion for service by publication on Equity Financing, Ltd.
4 and MKS, LLC. The deadline to serve Equity Financing, Ltd. and MKS, LLC by publication is extended
5 to September 9, 2014. Plaintiffs shall comply with the requirements of Nevada Rule of Civil Procedure
6 4 and shall:

- 7 (a) Serve Equity Financing, Ltd. and MKS, LLC by publication in a newspaper of
8 general circulation in the State of Nevada on a weekly basis for a period of four
9 weeks.
- 10 (b) Serve Equity Financing, Ltd. and MKS, LLC by publication in a newspaper of
11 general circulation in the State of Georgia on a weekly basis for a period of four
12 weeks.
- 13 (c) After publication is complete, Plaintiffs shall file an Affidavit of Publication
14 from both the Nevada and the Georgia newspapers.

15 For the reasons discussed above, the pending motion to extend the deadline to serve and for
16 service by publication is hereby GRANTED.

17 IT IS SO ORDERED.

18 DATED: July 9, 2014

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22 NANCY J. KOPPE
23 United States Magistrate Judge
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